

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.8639 OF 1988

WITH

SPECIAL CIVIL APPLICATIONS NO.7671 OF 1989,

7921 OF 1989, 8535 OF 1989, 4161 OF 1990,

7188 OF 1993, 11211 OF 1994, & 121 OF 1996.

For Approval and Signature

The Hon'ble Mr. Justice S.K. KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?
  2. To be referred to the reporters or not ?
  3. Whether their lordships wish to see the fair copy of the judgment ?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
  5. Whether it is to be circulated to the Civil Judge?

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GOVINDBHAI A CHAUHAN & ORS.

VERSUS

THE GUJARAT SCHEDULED CASTE ECONOMIC DEVELOPMENT CORPN.

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Appearance:

Special Civil Application No.8639 of 1988:

Mr. R.K.Mishra for the Petitioners

Mr. H.L. Jani for Respondent-State

None present for other Respondents

Special Civil Application No.7671 of 1989:

Mr. S.N. Soparkar for the Petitioners  
Mr. H.L. Jani for Respondent-State  
None present for other Respondents

Special Civil Application No.7921 of 1989:

Mr. R.K.Mishra for the Petitioner  
Mr. H.L. Jani for Respondent-State  
None present for other Respondents

Special Civil Application No.8535 of 1989:

Mr. P.K. Jani for the Petitioner  
Mr. H.L. Jani for Respondent-State  
None present for other Respondents

Special Civil Application No.4161 of 1990:

Mr. S.N. Soparkar for the Petitioner  
Mr. H.L. Jani for Respondent-State  
None present for other Respondents

Special Civil Application No.7188 of 1993:

Mr. Nagesh Sud for the Petitioner  
Mr. H.L. Jani for Respondent-State  
None present for other Respondents

Special Civil Application No.11211 of 1994:

Mr. Amar Bhatt for the Petitioner  
Mr. H.L. Jani for Respondent-State  
None present for other Respondents

Special Civil Application No.121 of 1996:

Mr. J.F. Shah for the Petitioner  
Mr. H.L. Jani for Respondent-State  
None present for other Respondents

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Coram: S.K. Keshote,J  
Date of decision: 01/05/97

C.A.V. JUDGMENT

Heard learned counsel for the parties. As the facts and grounds on which the challenge has been made to the action of the respondents to terminate the services of the petitioners proceed on the common facts and grounds, all these writ petitions are being disposed of by this common order.

## 2. Special Civil Application No.8639 of 1988:

There are in all, four petitioners in this Special Civil Application. The petitioner No.1 was selected as apprentice by the respondent-Corporation with effect from 30th September 1985. This apprenticeship was for one year, i.e. upto 30th September 1986. On completion of the aforesaid apprenticeship, the petitioner, as per his own case, was appointed on daily wages as Junior Assistant. The petitioner No.2 was also selected as trainee for apprenticeship with effect from 30th September 1985 to 30th September 1986 and on completion of the said period, he was given appointment on the post of Junior Assistant on daily wages. The petitioner No.3 was selected to undergo apprenticeship for one year from 30th September 1986 to 30th September 1987. Then she was given appointment on the post of Junior Assistant on daily wages with effect from 1.10.87. Similarly, the petitioner No.4 was also selected for apprenticeship with effect from 1st October 1987 to 1st October 1988 and after completion of the said period, he was given appointment on daily wages as Junior Assistant. It is the case of these petitioners that they were ordered to be continued on the post of Junior Assistants on daily wages for all these years though they made representations from time to time for their absorption in regular service. The petitioners filed this petition before this Court and the prayer has been made for direction to the respondents to absorb them on permanent post of Junior Assistant in the pay scale of the post, to provide them the benefits of permanency, seniority and have also prayed for further directions to give them benefits of the pay scale from the date of completion of apprenticeship. This petition has come up for admission before this Court on 30th December 1988 on which date, notices were issued and by way of interim relief, the respondents were directed to maintain status-quo as regards the service of the petitioners. On 2nd February 1989, this Court ordered:

"Rule. Status quo to continue.

Despite the status quo order, it will be open to

the respondents to give any appointments to the petitioners as they deem fit, even including ad-hoc appointments."

After filing of this Special Civil Application, the petitioners prayed for amendment of the Special Civil Application, which was granted. Para-12A has been inserted wherein the petitioners have made a grievance that in total disregard of the provisions of Section 25F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act 1947), the respondents sought to terminate the services of the petitioners. It is not in dispute that all the petitioners are continuing in service of the respondents on daily wages under the interim relief granted by this Court.

### 3. Special Civil Application No.7671 of 1989:

There are two petitioners in this Special Civil Application. The first petitioner was appointed as Gujarati Typist on daily wages on 1.12.86. The petitioner No.1 came to be appointed, as per his own case, pursuant to his name being recommended by the Employment Exchange, albeit for the post of apprentice. On 16.9.87, the petitioner No.1 gave an application to the respondent for being appointed as an apprentice (Junior Clerk). The petitioner states that on 1.10.87, he was promoted to the post of apprentice Clerk. Under the letter dated 9th October 1987, the petitioner No.1 was directed to undergo training as apprentice for a period of one year. The petitioner No.1 has completed that period and thereafter he was appointed as apprentice Clerk, as per his own case, on daily wages. The petitioner No.2 joined the respondent-Corporation on daily wages on 12.1.87. He worked till June 1987 and then after giving a break for couple of days, as per his case, again he was given appointment. On 1.10.87, he was appointed as apprentice to undergo one year apprenticeship. After completion of apprenticeship, he has been given appointment on daily wages from 12th January 1987. Both these petitioners have also prayed for directions to the respondents to regularize their services from the date on which they have joined the services of the respondents and to give them all consequential benefits together with interest at the rate of 18% p.a. on the arrears. The writ petition has been amended and further prayer has been made for directions to the respondents to pay to the petitioners from the date on which they have joined the services of the Corporation, and all other equal benefits as are given to other persons of the respondent-Corporation doing equal

work. This petition has come up for admission on 24th October 1989 on which date, Notice was issued. On 6th November 1989, this Court made an order:

"Ad-interim relief to maintain status quo qua  
petitioners till 21.11.89..."

Thereafter on 20.11.89, the ad interim relief was extended upto 5th December 1989. On 5th December 1989, the ad interim relief was modified and it was ordered that till duly recruited candidates are appointed, the petitioners shall be continued as daily wagers. On 21st June 1990, this Court made an order which reads as under:

"It is clear from the facts of these cases that a similar application, more or less on similar facts, was admitted by a Bench of our High Court and the number is Special Civil Application No.8639 of 1988. In view of that it is but fair that these Special Civil Applications are also admitted and heard alongwith Special Civil Application No.8639 of 1988. Rule. To be heard with Special Civil Application No.8639 of 1988. Nevertheless, as correctly suggested by Mr.Qureshi, learned counsel appearing for the respondents in all these petitions, the appointment should not be on the basis of the prior recruitments, but on the basis of the reservation policy, and if that be so, the petitioners in all these Special Civil Applications may not be having chances to be absorbed. Considering this submission, it is necessary to have these Special Civil Applications posted at an early date for final disposal. In as much as the status quo has been maintained in all these months in all these cases in respect of the petitioners herein, status quo of the petitioners as on date in all these cases will be maintained till the disposal of the main Special Civil Applications. Post the main Special Civil Applications for final disposal on 27th August 1990."

#### 4. Special Civil Application No.7921 of 1989:

The petitioner, in this Special Civil Application was appointed as Junior Assistant, now Junior Clerk, with effect from 22nd January 1985 on daily wages. The services of the petitioner were brought to an end under the order dated 15th July 1986. Thereafter the petitioner was taken into service from 28th July 1986 for 29 days in the pay scale of Rs.260-400 as Junior

Assistant. It was an appointment for fixed term and purely on temporary basis subject to the conditions contained in the order. It is the case of the petitioner that later on he was sent for apprentice training for one year. The petitioner filed this writ petition in apprehension that his services will be brought to an end on 16.11.89. Prayer has been made by the petitioner in this Special Civil Application for declaring the purported action to terminate the services of the petitioner, to be illegal, unconstitutional, null and void and for directions to the respondents to absorb the petitioner on the post of Junior Clerk and to place him in regular pay scale. The petitioner has been protected by grant of interim relief by this Court and he is continuing in the service.

5. Special Civil Application No.8535 of 1989:

The petitioner, under the order dated 7th September 1987 of the Corporation, was appointed as a Junior Clerk on daily wages and it is the case of the petitioner that since he is continuously working in the Corporation, except for one artificial gap. The Employees' Union made a request to the Corporation for regularizing the services of the petitioner and other daily wagers, but that request seems to have not been accepted. Having apprehension of termination of services, the petitioner filed this Special Civil Application before this Court and prayers have been made to declare the proposed action of the respondents to terminate the services of the petitioner to be illegal and further to issue direction to the respondents to regularize the services and to give him all consequential benefits like in other cases. In this case also, the petitioner has been protected by grant of interim relief by this Court and he is continuing in service till date on daily wages, on which there is no dispute.

6. Special Civil Application No.4161 of 1990:

The petitioner herein filed Civil Application No.906 of 1990 for impleading him as petitioner in Special Civil Application No.7671 of 1989, but it appears that this Civil Application was ordered to be converted in Special Civil Application and it was registered as Special Civil Application No.4161 of 1990. the petitioner was taken as apprentice on 29th September 1986. On completion of the period of apprenticeship, she has been appointed on daily wages on the post of Junior Assistant, now Junior Clerk. The writ petition has been filed by the petitioner seeking same reliefs as has been

prayed by petitioners in Special Civil Application No.7671 of 1989. Prayers have been made in the said Special Civil Application for regularization of services and for giving them all consequential benefits. In this case also, the petitioner has been protected by this Court by granting the interim relief and as such, she continues in service as daily wager.

7. Special Civil Application No.7188 of 1993:

The petitioner, in this Special Civil Application, was appointed as daily wager on 7.9.87 and since that day as per his case, he is continuing in service as daily wager, except for one or two days' break in the month of October 1988. Relief has been prayed for by the petitioner in this Special Civil Application for regularization of services and to give him all the benefits following therefrom. Like other cases, in this case also, the petitioner has been protected by grant of interim relief and under the said order, he is continuously working till date as daily wager.

8. Special Civil Application No.11211 of 1994:

The petitioner was appointed as a daily wager on 3rd September 1987 as Junior Assistant, now Clerk, and it is the case of the petitioner that since that day, he is continuously working, though with some artificial breaks. On 1.7.89, the respondent wrote a letter to the District Manager of the respondent's Junagadh Branch instructing him to terminate the services of the petitioner orally. The petitioner herein filed a suit being regular Civil Suit No.390 of 1989 in the Court of learned Civil Judge (Senior Division) Junagadh. In the said suit, exparte injunction was granted in favour of the petitioner restraining the respondents from implementing the order of terminating the services of the petitioner. However, the exparte injunction was vacated after hearing both the sides vide order dated 8.8.94 on the ground that the Court of the Civil Judge (S.D.) Junagadh had no jurisdiction to try and dispose of the suit as its jurisdiction was barred. The petitioner sought permission of the Court to withdraw the suit for taking appropriate proceedings. Permission has been granted and exparte ad interim injunction was ordered to be extended till 27th September 1994. Then the petitioner filed this Special Civil Application before this Court on 22nd September 1994 and prayed therein to regularize his services from the date on which he has joined the services of the respondent-Corporation and for all consequential benefits. This Court has protected the

petitioner and as such, he is continuing in the services.

9. Special Civil Application No.121 of 1996:

The petitioner came to be appointed as daily wager Clerk on 30th May 1986. The petitioner made representation to the Chairman of the Corporation to regularize his services and to extend the benefits of bonus etc. It is the case of the petitioner that from 20th December 1995, he was not permitted to join the duties. Hence this Special Civil Application. In this case also, this Court has, by grant of interim relief, protected the petitioner, and he is continuing in services till date under the order of this Court.

10. The respondent-Corporation contested these petitions by filing reply to the Special Civil Applications. In these Special Civil Applications, main arguments have been advanced by Shri J.F. Shah, learned counsel for the petitioner in Special Civil Application No.121 of 1996. Firstly, it has been contended by the learned counsel for the petitioner that the action of the respondents to terminate the services of the petitioners without giving any order and without service thereof is illegal and arbitrary. It has next been contended that a hostile discrimination has been made by the respondents in making regularization of services of the persons who were appointed alike the petitioners. It has been contended that Kum. Bhartiben K. Patel, Shri B.D. Ninama were appointed as regular Junior Clerks and Shri R.M. Ravat as regular Peon, though all these persons were also working on daily wages. This action was contended to be in violation of Articles 14 & 16 of the Constitution of India. It has next been contended that the oral termination of services of the petitioners by respondent No.2 was illegal as he was not competent to make the same. It has further been contended that the petitioners are entitled of pay in the pay scale of the post of Junior Clerk on the principle of "equal pay for equal work". In support of this contention, the learned counsel for the petitioners has placed reliance on the decision of Hon'ble Supreme Court in the case of Jaipal & Ors. v. State of Haryana & Ors., reported in AIR 1988 SC 1504. Lastly, the learned counsel for the petitioners contended that it is a case where the petitioners are working on daily wages for years together and as such, the Corporation should have regularized their services, which has not been done. This Court may issue directions to the respondent to regularize their services.

11. The learned counsel for the respondents, in



Special Civil Application No.7188 of 1993 raised a preliminary objection that this Special Civil Application deserves to be dismissed only on the ground that the petitioner is guilty of misrepresentation of material facts. It has further been contended that otherwise also, this writ petition is barred by principles of res-judicata or constructive res-judicata as the suit filed by the petitioner in Civil Court for the same relief has been dismissed and which judgment has attained the finality. The learned counsel for the respondents has filed on the record of this case, decision of the Civil Court in Regular Civil Suit No.513 of 1989 of the Court of Civil Judge, (S.D.), Bharuch, dated 13th July 1993. The petitioner has not controverted the facts stated by the respondent-Corporation in the reply as no rejoinder has been filed. A copy of the reply was given to the counsel for the petitioner on 25th April 1996 as it is apparent from the endorsement on the reply, filed in the Court. On merits, the learned counsel for the respondents contended that all the petitioners were appointed on daily wages only and as such, they have no right whatsoever to continue in the employment as well as they have not acquired any right for their regularization in service. Initial appointments on daily wages was bad in law as it was a case of back door entry. Their appointment has not been made after making selection as per rules or by making selection from the open market. It has next been contended that many of the petitioners have been taken as apprentice for apprenticeship, duration of which is one year, but merely because of the fact that they have undergone apprenticeship training, they do not acquire any right to be appointed or for regularization of their services. The persons for apprentice were selected more than the number required. Only two apprentice could have been selected and accordingly services of two persons have been regularized. Lastly, it has been contended that none of the legal or fundamental rights of the petitioners are being infringed and as such, there is no question of giving of any relief to them as prayed for in these Special Civil Applications. Relying on the contention of the learned counsel for the petitioners for their claim for regularization on the principle of "equal pay for equal work", the learned counsel for the respondents contended that when the appointment of the petitioners itself was bad, no question does arise for regularization of their services. The claim of the petitioners for "equal pay for equal work" is also not tenable as they have been specially appointed on daily wages and they have been work on the days on which work was available.

12. I have given my thoughtful considerations to the submissions made by the learned counsel for the parties.

13. When asked by the Court, the learned counsel for the respondent-Corporation has submitted in writing on the record of these matters that in the year 1989, as per the directions issued by the State Government, the Corporation has undertaken the process for filling up backlog vacancies reserved for Schedule Tribe candidates. Names were called for from Employment Exchange for the said purpose. One Smt. Bhartiben K. Patel, who was serving as a daily wager Junior Clerk with the Corporation was considered as her name was sponsored by Employment Exchange and she was appointed on regular basis after selection process. Similarly, one Shri R.M. Ravat, who was working as daily wager Peon was selected and appointed, and during the same selection one Shri B.D. Ninama was regularly selected and appointed, though he was not working with the Corporation. The second selection process was undertaken in the year 1992 for filling up the backlog vacancy belonging to reserved category of Socially & Educationally Backward Class (SEBC) and Schedule Tribe (ST). One Shri H.C. Parmar (SEBC) and one Shri Manubhai Gameti (ST) were appointed pursuant to the selection process. Both of them were not working with the Corporation. It has lastly been stated that at present, there are 37 sanctioned posts of Clerk (Class III), out of which eight posts are vacant.

14. The facts aforesaid mentioned by the respondents in the form of writing were not controverted by the petitioners. This writing is taken on record of Special Civil Application No.8639 of 1988 and other group matters.

15. First of all, I consider it to be appropriate to decide the Special Civil Application No.7188 of 1993, as this Special Civil Application, in my opinion, deserves to be dismissed only on the ground that the petitioner has concealed the material facts from this Court and he got the order of Rule nisi as well as interim relief in his favour by concealing material facts. The petitioner, in this Special Civil Application, having apprehension of termination of his service, filed Regular Civil Suit No.513 of 1989 in the Court of 4th Joint Civil Judge, (S.D.), Bharuch. This suit has been filed for declaration and permanent injunction. This clearly is borne out from para 1 of the judgment given by the Civil Court in the said suit, which reads as under:

The abovenamed plaintiff has filed the present

suit for declaration and injunction that the defendants be restrained from terminating the services of the plaintiff in the capacity of Junior Clerk and prayed relief in terms of para 8 of the Plaint at ex.1.

In the said Civil Suit, the petitioner filed application ex.5 for grant of temporary injunction and the temporary injunction has been granted in favour of the petitioner, and as such, he continued in services on the basis of interim relief till 30th July 1993. It is not in dispute that in the year 1989, the petitioner's services were sought to be terminated, but the petitioner continued in services till the suit has been decided under the interim relief granted by the Civil Court. So it is not the case where the petitioner was working for years together, as alleged in the Special Civil Application.

16. The petitioner in this case was working on daily wages and his services were sought to be terminated, but he continued in service for all these years in the first phase under the interim order of the Civil Court and in the second phase under the interim order of this Court. The petitioner has deliberately concealed the fact that the suit filed by him in the civil court has been dismissed. Not only he concealed this fact, but by concealing this fact he has obtained rule nisi issued and interim relief granted in his favour. I find sufficient merits in the contention of the learned counsel for the respondents that this writ petition deserves to be dismissed only on the ground of suppression of material fact, without going into the merits of the matter. In proceedings under Article 226 of the Constitution of India, which are initiated for attracting extraordinary jurisdiction of this Court, it is of utmost importance that the petitioner should come forward with clean hands. This Court cannot encourage the idea that a person is entitled to adopt dubious or dishonest or fraudulent means and make false averments while submitting writ petition in this court and further when his falsehood is exposed by the other side putting the correct facts before the Court, it would not be proper to allow the petitioner to make his submissions on merits of the case. It would be laying down a very dangerous principle in the conduct of human affairs if the courts of law are allowed to be flooded with petitions based on false averments. This court can help in its extraordinary jurisdiction only those persons who approach the court with clean hands, and if in a given case the court finds that the conduct of the petitioner has not been honest, the court may decline to give any relief to the petitioner. A

person who adopts dubious means must suffer the consequences of his conduct. In the present case, as stated earlier the petitioner obtained ex parte interim relief as well as rule nisi issued in the petition by not disclosing true and correct facts. Therefore the petitioner is not entitled to any relief on merits of the case. This special civil application is dismissed only on this ground.

17. So far as to other petitioners in the other petitions are concerned they have been appointed on daily wages. Many of the petitioners were taken as apprentice under the Apprenticeship Act, but the fact is that all of them have been appointed on daily wages after completion of apprenticeship.

18. It is settled law that a temporary Government servant does not become permanent unless he acquires that capacity by force of any rule or is declared as permanent servant. Reference in this respect may have to be made to the decision of the apex court in the case of Madhya Pradesh Hasta Shilpa Vikas Nigam Limited vs. Devendra Kumar Jain, reported in JT 1995 (1) SC 198. Case of a daily wager cannot be on a better footing than temporary Government servant. The petitioners in all these petitions have prayed for regularization of their services. Merely because the petitioners were taken initially as apprentice and thereafter they were appointed on daily wages, it will not give any right to them for their regularization in the service. It is the case of the respondents that apprentices were taken in the present cases in excess of the number. However, the fact remains that the petitioners continued in service as daily wagers and it is not the case of regular appointment as daily wagers also. The petitioners were taken as apprentices after interview, but subsequently on completion of their apprenticeship they were taken on daily wages and at that point of time no selection has been made. Recruitment is to be made, as per the case of the respondents, after holding interview and selection by the Selection Committee. So these appointments of the petitioners are nothing but back door entries. It is not the case of the petitioner that the Corporation has not framed rules for recruitment. Even if it is taken that the rules for recruitment have not been framed, then certainly the Corporation being 'State' or 'Instrumentality or Agency of State' within the meaning of Article 12 of the Constitution of India, it has to follow the provisions of Articles 14 and 16 of the Constitution in the matter of making recruitment to various posts. Articles 14 and 16 of the Constitution

are applicable even to temporary appointments. Recruitments have to be made by making selection by giving public advertisement to ensure that eligible candidates get equal opportunity of consideration for appointment in the public employment. In the case of State of Himachal Pradesh vs. Suresh Kumar Verma, reported in JT 1996 (2) SC 455, the apex Court held that it is settled law that having made rules of recruitment to various services under the State or to a class of posts under the State, the State is bound to follow the same and to have the selection of the candidates made as per recruitment rules and appointments shall be made accordingly. It has further been held by the apex Court that appointment on daily wage basis is not an appointment to a post according to the Rules. Vacancies are required to be filled up in accordance with the rules and all the candidates who would otherwise eligible are entitled to apply for, when recruitment is made and seek consideration of their claims on merits according to the Rules for direct recruitment along with all the eligible candidates. The appointment on daily wages cannot be a conduit pipe for regular appointments which would be a back-door entry, detrimental to the efficiency of service and would breed seeds of nepotism and corruption. It is equally settled law that even for Class IV employees recruitment according to rules is a precondition. In view of the aforesaid position of law as laid down by the apex Court, daily wage employees have no right whatsoever to a post. Daily wage employees get appointment on the date on which work is available and it comes to an end on the very day. It is a different matter that despite settled legal position State functionaries, statutory corporations or other agencies still make appointment on daily wages and keep the same continued for years together. Naturally then this class of persons approach the courts for continuance of their services and for regularization. In such cases if directions are being given for regularization of services of all this class of persons, then the judicial process would become another mode of recruitment de hors the rules. The apex Court in the case of State of Himachal Pradesh Vs. Suresh Kumar Verma (supra), in para 3 of the judgment observed as under:

"It is seen that the project in which the respondents were engaged had come to an end and that, therefore, they have necessarily been terminated for want of work. The Court cannot give any directions to re-engage them in any other work or appoint them against existing vacancies. Otherwise, the judicial process would

become other mode of recruitment de hors the rules."

Not only that the judicial process would become other mode of recruitment de hors rules, but the appointments which were per se unconstitutional will also become regular appointments, and many of the eligible candidates having eligibility for the post will be deprived of their fundamental right for consideration in public employment conferred under Articles 14 and 16 of the Constitution.

19. In fact these appointments on daily wages, temporary appointments and ad hoc appointments should not have been made. Only in exceptional cases the appointments should have been made on daily wages or on temporary basis, but the duration of the same should not have exceeded in any case more than three months. Thereafter, if appointment is to be made, then the proper procedure has to be followed. The way and the manner in which daily wages, temporary or adhoc appointments are made in the Government Departments as well as Corporations and other public enterprises and the continuance thereof clearly gives out that very calculated actions are taken to bestow benefits to their own persons.

20. In the case of Hindustan Shipyard Ltd. vs. Dr. P. Sambasiva Rao, reported in JT 1996(2) SC 481, the apex Court has considered the question of regularization of Medical Officer working in the appellant Corporation for number of years on adhoc basis. The High Court in that case gave direction for regularization and matter was carried before the Supreme Court in appeal. The apex court observed;

"We are unable to endorse the direction given by the High Court regarding regularization of the respondents-medical officers with effect from April , 1986. The process of regularization involves regular appointment which can be done only in accordance with the prescribed procedure. Having regard to the rules which have been made by the appellant-Corporation, regular appointment on the post of medical officer can only be made after the duly constituted Selection Committee has found the person suitable for such appointment. Dr. P. Sambasiva Rao, though he had been working since 1976, was considered by the Selection Committee for regular appointment in the year 1981 and was not found suitable for

such regular appointment. Dr.J. Sanjeeva Kumar and Dr. S. Prasad Rao were never considered by the Selection Committee for regular appointment. The fact that no regular selection has been made after their appointment on ad hoc basis does not mean that they are entitled to be regularized with effect from April 1, 1986. In view of the Rules prescribed by the appellant-Corporation, regularization of the respondent medical officers on the post of medical officer can be made only after they are considered and found suitable for such appointment by a duly constituted Selection Committee. As a result of the direction for regularization given by the High Court, the requirement in the Rules regarding selection by a Selection Committee for the purpose of regular appointment on the post of medical officer has been dispensed with. This, in our opinion, was impermissible."

In the case of Dr. M.A. Haque vs. Union of India, JT 1993(2) SC 265, the apex court has deprecated the practice of bypassing of the Public Service Commission which would open a back door for illegal recruitment without limit. The apex court has given that the medical officers should be considered by a duly constituted Selection Committee as per rules for the purpose of regular appointment on the post of Medical Officer.

21. Next is the case in the case of Dr. Surinder Singh Jamwal vs. The State of Jammu & Kashmir, reported in JT 1996(6) SC 725. In that case the appellant had put in 13 years as ad hoc employee and claimed regularization. The Court has not given any direction for regularization. In para 2 of the judgment the apex court observed as follows:

"The controversy raised in this case is squarely covered by the judgment of this Court reported in J. & K. Public Service Commission vs. Dr. Narinder Mohan, JT 1993(6) SC 583 = 1994 (2) SCC 630. It is not in dispute that the appellants were recruited on ad hoc basis and have been continuing as such. It is their contention that since they had put in more than 13 years of service they are entitled to regularization of service and approached the High Court for direction to regularize their services. The High Court has followed the ratio in the above judgment and dismissed the petition. In the light of the judgment of this Court the settled

legal position now is that the recruitment to the service should be governed by the appropriate statutory rules. Under the rules the regular recruitment to the posts shall be made by the Public Service Commission. Consequentially, the ad hoc appointments would be only temporary appointments de hors the rules, pending regular recruitment without conferring any right to regularization of service. This Court in Narinder Mohan's case (supra) had given the following directions:

"Accordingly, we set aside the directions issued by the Division Bench of the High Court and confirm those of the Single Judge and direct the State Government of the J & K to notify the vacancies to the PSC which would process and complete the selection, as early as possible, within a period of six months from the date of the receipt of this order. The State Government should on receipt of the recommendation, make appointments in the order mentioned in the selection list within a period of two months thereafter. Since the respondents have been continuing ad hoc doctors, they shall continue till the regularly selected candidates are appointed. They are also entitled to apply for selection. In case any of the respondents are barred by age, the State Government is directed to consider the cases for necessary relaxation under Rule 9(3) of the age qualification. If any of the respondents are not selected, the ad hoc appointments shall stand terminated with the appointment of the selected candidate. The direction sought for by Dr. Vinay Rampal cannot be given. His appeal is accordingly dismissed and the State appeal is also dismissed. The appeals of the PSC are accordingly allowed but in the circumstances the parties are directed to bear their own costs."

Directions were given in that case to the State Government to notify the vacancies to the Public Service Commission within a period of two months from the date of the order. On notification so made, it was ordered that it shall be open to the appellants to apply for regular recruitment, and the PSC to consider the respective claim of the candidates who have applied for and to make necessary selection according to rules. It has been ordered by the apex court that the State Government would relax the age qualification so as to enable the appellants to apply for and seek recruitment through PSC.



So in both the aforesaid cases though the appointments on ad hoc basis were made for years and those persons were continued on ad hoc basis for years together, regularization was not given as the appointments were ad hoc and without any selection.

22. Here is the case where none of the petitioners is working for long duration. The period of working on daily wage is of no significance or substance as daily wagers have no right to the post. In view of this position the contentions raised by the counsel for the petitioners has no merits. All these petitions deserve to be dismissed only on the ground that the petitioners have no right to the posts, though all these petitioners are working on the posts, may be under the order of the court. The respondent Board has admitted that 8 posts of clerks are lying vacant in the Corporation. It is therefore ordered that the petitioners may be given an opportunity to compete for selection and recruitment against these posts. The respondent Corporation is directed to advertise the eight vacancies for selection and recruitment within a period of two months from today. It shall be open to the petitioners to apply for the posts. Selection and recruitment to those posts may be made within six months from today. Those petitioners who would be selected and appointed on the posts shall be continued in service, but the services of those who fail to get selected shall come to an end automatically on the date the selected candidates join service.

23. In the result, all these Special Civil Applications, and Rule therein, except Special Civil Application No.7188 of 1993, stand disposed of with the aforesaid direction. Special Civil Application No.7188 of 1993 stands dismissed. Rule discharged. Interim relief granted by this Court in the Special Civil Applications, except Special Civil Application No.7188 of 1993, shall continue till selection on the eight posts are finalised.

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(s/m)